

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS**

In the Matter of the Accusation Against:

Case No. 3079

MELISSA DAWN OWENBY-COLLINS
12046 Charwood Street
Artesia, CA 90701
Pharmacy Technician Registration
No. TCH 44342

Respondent.

DECISION AND ORDER

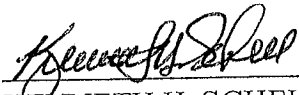
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by
the Board of Pharmacy, as its Decision in this matter.

This Decision shall become effective on August 8, 2008. It is so ordered.

ORDERED July 9, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 DESIREE TULLENERS, State Bar No. 157464
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
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6
7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 3079

12 **MELISSA DAWN OWENBY-COLLINS**
1246 Charwood Street
13 Artesia, CA 90701
Pharmacy Technician Registration
14 No. TCH 44342

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Respondent.

16
17 ***IT IS HEREBY STIPULATED AND AGREED*** by and between the parties to
18 the above-entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of
21 Pharmacy. She brought this action solely in her official capacity and is represented in this matter
22 by Edmund G. Brown Jr., Attorney General of the State of California, by Desiree Tulleners,
23 Deputy Attorney General.

24 2. Respondent Melissa Dawn Owenby-Collins is representing herself in this
25 proceeding, and has chosen not to exercise her right to be represented by counsel.

26 3. On or about September 5, 2002, the Board of Pharmacy (Board) issued
27 Pharmacy Technician Registration No. TCH 44342 to Melissa Dawn Owenby-Collins
28 (Respondent). The Pharmacy Technician Registration was in full force and effect at all times

1 relevant to the charges brought in Accusation No. 3079, and will expire on July 31, 2008, unless
2 renewed.

3 JURISDICTION

4 4. Accusation No. 3079 was filed before the Board, and is currently pending
5 against Respondent. The Accusation and all other statutorily required documents were properly
6 served on Respondent on January 25, 2008. Respondent timely filed her Notice of Defense
7 contesting the Accusation. A copy of Accusation No. 3079 is attached as Exhibit A and
8 incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations
11 in Accusation No. 3079. Respondent has also carefully read, and understands the effects of this
12 Stipulated Settlement and Disciplinary Order.

13 6. Respondent is fully aware of her legal rights in this matter, including the
14 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
15 counsel at her own expense; the right to confront and cross-examine the witnesses against her;
16 the right to present evidence and to testify on her own behalf; the right to the issuance of
17 subpoenas to compel the attendance of witnesses and the production of documents; the right to
18 reconsideration and court review of an adverse decision; and all other rights accorded by the
19 California Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
21 each and every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in
24 Accusation No. 3079.

25 9. Respondent agrees that her Pharmacy Technician Registration is subject to
26 discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the
27 Disciplinary Order below.

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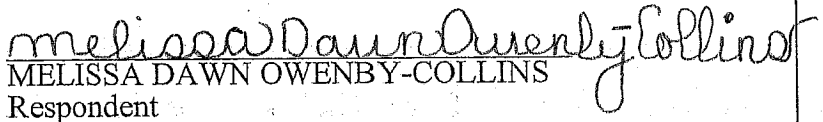
1 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
2 other proceeding seeking to deny or restrict licensure.

3 Respondent shall pay the Board its costs of investigation and enforcement in the
4 amount of \$7,668.75 prior to issuance of a new or reinstated license.

5 ACCEPTANCE

6 I have carefully read the Stipulated Settlement and Disciplinary Order. I
7 understand the stipulation and the effect it will have on my Pharmacy Technician Registration.
8 I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
9 intelligently, and agree to be bound by the Decision and Order of the Board.

10 DATED: 4/11/2008

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12 
13 MELISSA DAWN OWENBY-COLLINS
14 Respondent

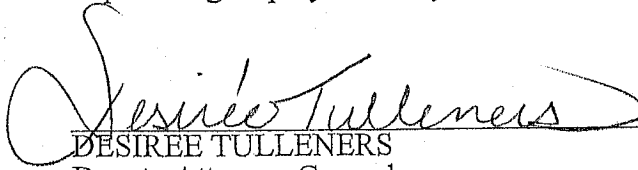
15 ENDORSEMENT

16 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
17 submitted for consideration by the Board.

18 DATED: 4-21-08

19 EDMUND G. BROWN JR., Attorney General
20 of the State of California

21 GREGORY J. SALUTE
22 Supervising Deputy Attorney General

23 
24 DESIREE TULLENERS
25 Deputy Attorney General

26 Attorneys for Complainant

Exhibit A

Accusation No. 3079

EDMUND G. BROWN JR. Attorney General
of the State of California
GREGORY J. SALUTE
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DESIREE TULLENERS, State Bar No. 157464
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California Department of Justice
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Attorneys for Complainant

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 3079

MELISSA DAWN OWENBY-COLLINS
12046 Charlwood St.
Artesia, CA 90701

A C C U S A T I O N

Pharmacy Technician Registration
No. TCH 44342

Respondent.

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
2. On or about September 5, 2002, the Board of Pharmacy, (Board) Department of Consumer Affairs issued Pharmacy Technician Registration No. TCH 44342 to Melissa Dawn Owenby-Collins (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2008, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy, Department of Consumer Affairs, under the authority of the following laws. All section references are to the

1 Business and Professions Code unless otherwise indicated.

2 **STATUTORY PROVISIONS**

3 4. Section 118(b), states:

4 "The suspension, expiration, surrender or cancellation of a license shall not
5 deprive the Board of jurisdiction to proceed with a disciplinary action during the period within
6 which the license may be renewed, restored, reissued or reinstated.

7 5. Section 4300 of the Code states in pertinent part, that every license issued
8 by the Board is subject to discipline, including suspension or revocation,

9 6. Section 4301 of the Code states:

10 "The board shall take action against any holder of a license who is guilty of
11 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
12 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
13 following:

14 ...
15 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
16 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
17 otherwise, and whether the act is a felony or misdemeanor or not.

18 ...
19 (j) The violation of any of the statutes of this state, or any other state, or of the
20 United States regulating controlled substances and dangerous drugs.

21 ...
22 (l) The conviction of a crime substantially related to the qualifications, functions,
23 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
24 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
25 substances or of a violation of the statutes of this state regulating controlled substances or
26 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
27 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
28 The board may inquire into the circumstances surrounding the commission of the crime, in order

1 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
2 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
3 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty
4 or a conviction following a plea of nolo contendere is deemed to be a conviction within the
5 meaning of this provision. The board may take action when the time for appeal has elapsed, or
6 the judgment of conviction has been affirmed on appeal or when an order granting probation is
7 made suspending the imposition of sentence, irrespective of a subsequent order under Section
8 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a
9 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
10 or indictment.

11
12 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
13 abetting the violation of or conspiring to violate any provision or term of this chapter or of the
14 applicable federal and state laws and regulations governing pharmacy, including regulations
15 established by the board or by any other state or federal regulatory agency.

16 (p) Actions or conduct that would have warranted denial of a license. . . .”

17 7. Section 4060 of the Code states:

18 “No person shall possess any controlled substance, except that furnished to a
19 person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
20 naturopathic doctor pursuant to Section 3640.7”

21 8. Section 490 of the Code states:

22 “A board may suspend or revoke a license on the ground that the licensee has
23 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or
24 duties of the business or profession for which the license was issued. A conviction within the
25 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo
26 contendere. Any action which a board is permitted to take following the establishment of a
27 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
28 been affirmed on appeal, or when an order granting probation is made suspending the imposition

1 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
2 Penal Code.”

3 9. California Code of Regulations, title 16, section 1770, states:

4 “For the purpose of denial, suspension, or revocation of a personal or facility
5 license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
6 Code, a crime or act shall be considered substantially related to the qualifications, functions or
7 duties of a licensee or registrant if to a substantial degree it evidences present or potential
8 unfitness of a licensee or registrant to perform the functions authorized by his license or
9 registration in a manner consistent with the public health, safety, or welfare.”

10 10. Section 125.3 of the Code provides, in pertinent part, that the Board may
11 request the administrative law judge to direct a licentiate found to have committed a violation or
12 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
13 and enforcement of the case.

14 **HEALTH AND SAFETY CODE SECTIONS**

15 11. Health and Safety Code section 11377(a), states in part:

16 “Except as authorized by law and as otherwise provided in subdivision (b) or
17 Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
18 Business and Professions Code, every person who possesses any controlled substance which is
19 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
20 subdivision (d), Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
21 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
22 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of section
23 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
24 practice in this state, shall be punished by imprisonment in a county jail for a period of not more
25 than one year or in the state prison.”

26 12. Health and Safety Code section 11357(b), states in part:

27 “Except as authorized by law, every person who possesses not more than 28.5
28 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor . . .”

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1 b. The circumstances surrounding the conviction are that on or about October
2 5, 2006, while employed at Rite Aid Pharmacy, located at 8030 Dale Street, Buena Park,
3 California, Respondent admitted to the theft of approximately 400 dosage units of Norco
4 10mg/325mg and 50 dosage units of Lortab 10 mg/500mg, from the pharmacy. The total amount
5 of loss of this medication to the pharmacy was \$368.97.

6 c. Respondent was arrested for the petty theft on or about October 5, 2006.
7 At the time of her arrest, Respondent had both methamphetamine and marijuana in her purse.
8 Respondent admitted that the methamphetamine and marijuana belonged to her.

9 **SECOND CAUSE FOR DISCIPLINE**

10 *(Unprofessional Conduct - Commission of Act Involving Moral Turpitude,*
11 *Dishonesty, Fraud, or Deceit)*

12 17. Respondent is subject to disciplinary action under sections 4300(a) and
13 4301(f), in that Respondent, stole medications, without a valid prescription, and while employed
14 at Rite Aid Pharmacy, as more fully described in paragraph 16, above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 *(Unlawful Possession of Controlled Substances)*

17 18. Respondent is subject to disciplinary action under sections 4300(a) and
18 4301(j), on the grounds of unprofessional conduct, for violating Section 4060 of the Code and
19 Health and Safety Code sections 11377(a), and 11357(b), in that Respondent was in possession
20 of controlled substances and dangerous drugs without valid prescriptions, as more fully described
21 in paragraph 16, above.

22 **PRAYER**

23 *WHEREFORE*, Complainant requests that a hearing be held on the matters herein
24 alleged, and that following the hearing, the Board of Pharmacy, Department of Consumer Affairs
25 issue a decision:

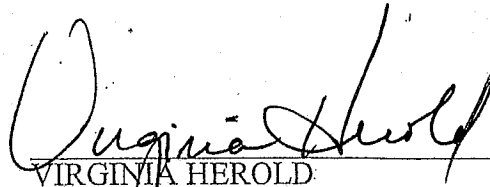
26 1. Revoking or suspending Pharmacy Technician Registration No. TCH
27 44342, issued to Melissa Dawn Owenby-Collins..

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1 2. Ordering Melissa Dawn Owenby-Collins to pay the Board of Pharmacy,
2 Department of Consumer Affairs the reasonable costs of the investigation and enforcement of
3 this case, pursuant to Business and Professions Code section 125.3; and

4 3. Taking such other and further action as deemed necessary and proper.

5 DATED: 1/15/08

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7 

8 VIRGINIA HEROLD
9 Executive Officer
10 Board of Pharmacy
11 State of California
12 Complainant
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